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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:20-cv-08570-JD

**ADVERTISER PLAINTIFFS' REPLY IN
SUPPORT OF THEIR MOTION FOR
CLASS CERTIFICATION**

Hearing Date: December 14, 2023
Hearing Time: 10:00 a.m.
Courtroom 11, 19th Floor
Judge: The Honorable James Donato

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Statutes, Rules, and Regulations

Federal Rules of Civil Procedure

Rule 23	2, 4, 5, 8
Rule 23(a)(3)	13

FILED UNDER SEAL**PRELIMINARY STATEMENT**

Meta's opposition reveals that there is no substance – legally or factually – to any of Meta's objections to class certification. To begin with, Meta's argument that Advertisers' damages model fails to disaggregate lawful from unlawful aspects of its monopoly is flawed for a simple reason: Advertisers intend to prove at trial that Meta would not have had a monopoly or market power absent its unlawful monopoly maintenance. This is the theory of Advertisers' case, which means that the appropriate measure of damages is the entire difference between the unlawful monopoly price and the competitive price in the but-for world. Moreover, Meta's argument about its pre-limitations conduct is directly foreclosed by binding case law and, in any event, based on an entirely misleading recitation of the facts to be proven at trial, including as to conduct within the limitations period. Meta's attack on Advertisers' yardstick model fares worse. Meta again ignores the long line of cases approving yardstick methodologies for measuring damages, and simply ignores that the damages model here looks to the amount *in excess* of the competitive economic profit rate, which necessarily isolates the portion of Meta's conduct that is attributable to its unlawful conduct.

Meta makes additional arguments that are on their face meritless. For example, Meta argues that not all of its ads are social ads, but in substance attacks market definition without analysis or expert testimony. Meta simply makes assertions contrary to the evidence cited in Advertisers' expert reports, which contain a *Brown Shoe* analysis, a SSNIP test, and a recitation of the mountain of evidence showing that Meta's ads fall within the Social Advertising submarket. Meta also makes factual arguments about its auction process, but its argument is misleadingly about the [REDACTED] of the ads on its platform that are outside of its auction, and, as it has done throughout its brief, Meta simply ignores the long line of cases rejecting Meta's argument that an auction process somehow creates predominance issues. Meta also speculates that its monopoly may have somehow benefited Advertisers, creating some supposed predominance issue. Meta identifies none of these benefits; does not deal with economic theory, which is clear that efficiencies are not passed on by a monopolist to consumers; and contradicts by pure fiat the evidence that its ad products did not in fact improve during the Class Period as shown by Dr. Williams' clickthrough-rate analysis. On this record, Meta's speculative and unsubstantiated "benefits" cannot offset Advertisers' concrete damages calculation.

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Meta’s remaining arguments border on frivolous. The record is clear that each named plaintiff is both typical of the Class and adequately represents the interest of all Class members, including the more than estimated 90% of advertisers that paid less than four figures for ads. Meta’s indirect purchaser argument is contradicted by the plain terms of the Class definition. Taken together, Meta’s arguments paint a clear picture: its opposition is a scattershot array of counterfactual and legally unsupported assertions. Advertisers’ motion for class certification should be granted.

ARGUMENT

Meta concedes the vast majority of Rule 23’s requirements. Its arguments relate solely to predominance and to the adequacy and typicality of the Plaintiffs. Each of Meta’s arguments are manufactured and meritless.

I. ADVERTISERS’ DAMAGES MODEL IS VIABLE, ROBUST AND CAN BE APPLIED ON A CLASSWIDE BASIS

Setting aside Meta’s argument that Advertisers’ damages model fails under *Daubert*, which is addressed fully in the parties’ *Daubert* briefing, Meta offers the Court two arguments with respect to Plaintiffs’ classwide damages model. First, Meta makes the demonstrably incorrect legal argument that Advertisers’ damages must be calculated for each of the individual exclusionary acts that maintained Meta’s social advertising monopoly, not from inflationary impact of the unlawful monopoly itself. The law on this point, including the very cases Meta cites, is unambiguous that Meta is incorrect. Advertisers’ damages are properly calculated as the difference between the unlawful monopoly price and the competitive price of the ads they purchased – and Advertisers contend the competitive price of these ads is their price in a but-for world where Meta did not engage in the exclusionary acts with which it is charged, and therefore ***did not possess a monopoly or market power during the Class Period***. Second, Meta makes a related argument that Advertisers’ damages model fails to take into account the “lawful” aspects of Meta’s monopoly. On this point, Meta simply misstates the factual record, including by incorrectly describing Advertisers’ damages model; in truth, nothing is unaccounted for. Both arguments regarding Advertisers’ damages model should be rejected.

FILED UNDER SEAL**A. Advertisers’ Damages Correctly Measure the Difference Between Meta’s Unlawful Monopoly Price and the Competitive Price in a But-For World**

Meta’s primary argument is based on a demonstrably incorrect proposition of law. Specifically, Meta asserts: “The law prohibits Advertisers from calculating the price difference attributable to Meta’s alleged monopoly rather than the specific challenged conduct at issue in this suit.” Opp. at 20.¹ Meta is wrong. To begin with, Meta’s assertion is a non sequitur – the conduct challenged by Advertisers is ***Meta’s unlawful monopolization*** of the Social Advertising Market, not merely one element of that claim. The elements of a monopolization claim are: “(1) the possession of monopoly power in the relevant market; and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). Meta’s argument conflates the monopolization offense – which is what Advertisers will prove at trial here – with exclusionary conduct sub-elements in arguing that damages must be computed and attributed to each alleged exclusionary act individually. This is in error.

Moreover, the law is clear that an overcharged plaintiff may recover the difference between the monopoly price and the price that would have existed in the but-for world. *See Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 489 (1968) (“[W]hen a buyer shows that the price paid by him for materials purchased for use in his business is illegally high and also shows the amount of the overcharge, he has made out a *prima facie* case of injury and damage within the meaning of [Clayton Act §] 4.”). Meta cites *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 297 (2d Cir. 1979), for the proposition that damages must be calculated from each exclusionary act individually rather than from the effect of the unlawful monopoly on prices, but *Berkey Photo* stands for no such proposition. There, the court was express that the “true measure of damages” is “the price increment caused by the anticompetitive conduct that originated or augmented the monopolist’s control over the market.” *Id.* at 297. In other words, the appropriate measure of damages is the

¹ “Opp.” citations are to Defendants’ Opposition to Advertiser Plaintiffs’ Motion for Class Certification (ECF No. 671-1). “Mot.” citations are to Advertiser Plaintiffs’ Motion for Class Certification (ECF No. 642-1). Exhibit citations are to the Declaration of Amanda F. Lawrence, filed concurrently herewith. Capitalized terms not otherwise defined herein retain the same meaning as the Motion. Emphasis is added and citations are omitted unless otherwise noted.

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1 portion of the difference between monopoly and competitive prices that is attributable to the
2 exclusionary conduct. *Id.* As Areeda explains *Berkey Photo* and the general rule:

3 Any obligation on plaintiffs to separate out the contribution of each
4 individual act to the defendant's monopoly price, and then to collect
5 damages only for that portion of the overcharge attributed to unlawful
conduct, either invites extreme speculation or else becomes an ineffective
rule of nonrecovery.

6 Once an exclusionary practice has been found unlawful and shown to be a
7 significant contributor to the monopolist's monopoly price, then the court
8 must indulge a presumption about the size of the contribution. Here, the
9 sensible presumption is that in the absence of the unlawful exclusionary
practice, the monopolist would have charged the competitive price, so
damages should be based on the difference between the monopoly price and
the competitive price.

10 Ex. 1 at 6-7.

11 Here, Advertisers contend – and their proffered damages model assumes – that Meta ***would***
12 ***not have a monopoly or market power in a but-for world without the challenged exclusionary***
13 ***conduct***, meaning the correct measure of damages is the difference between the monopoly price and
14 the competitive price calculated by Advertisers' damages model, including under the *Berkey Photo*
15 articulation. As the Second Circuit explained in *Berkey Photo*, where “but for [a defendant's]
16 illegitimate actions,” it “would have little or no market power,” the measure of damages yields “very
17 similar results” to the calculation of the entire difference between the monopoly price and the
18 competitive price. 603 F.2d at 297-98. This is because in such a case, ***all*** of the price inflation is
19 attributable to the market power and monopoly caused by the alleged exclusionary conduct. As such,
20 Advertisers' damages model precisely tracks the theory of Advertisers' liability case, which asserts
21 that but for its challenged conduct, Meta would not have maintained any monopoly power in the Class
22 Period.

23 What's more, even if Meta had proffered any kind of argument or evidence that some part of
24 its monopoly is “a consequence of a superior product, business acumen, or historic accident,” *Grinnell*
25 *Corp.*, 384 U.S. at 570-71, that is a merits issue that must be tried to a jury, not a necessary question
26 that can be decided as part of this motion – and it certainly is not a basis to deny class certification.
27 *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013) (“Rule 23 grants courts
28 no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may

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1 be considered to the extent – but only to the extent – that they are relevant to determining whether the
2 Rule 23 prerequisites for class certification are satisfied.”) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564
3 U.S. 338, 351 & n.6 (2011)).

4 In addition, Meta’s argument demanding a disaggregated measure of damages for each
5 exclusionary act flies in the face of repeated admonitions by the Ninth Circuit and the Supreme Court
6 that antitrust claims must be considered as a whole. *See Cont’l Ore Co. v. Union Carbide & Carbon*
7 *Corp.*, 370 U.S. 690, 699 (1962) (“In cases such as this, plaintiffs should be given the full benefit of
8 their proof without tightly compartmentalizing the various factual components and wiping the slate
9 clean after scrutiny of each. The character and effect of a conspiracy are not to be judged by
10 dismembering it and viewing its separate parts, but only by looking at it as a whole.”). If Meta’s
11 argument is credited, it would mean doing precisely what binding precedent says should not be done
12 in monopolization cases such as this one, involving a course of conduct with several exclusionary
13 acts. *City of Anaheim v. S. Cal. Edison Co.*, 955 F.2d 1373, 1376 (9th Cir. 1992) (in monopoly broth
14 cases, “it would not be proper to focus on specific individual acts of an accused monopolist while
15 refusing to consider the overall combined effect”); *see also Klein v. Facebook, Inc.*, 580 F. Supp. 3d
16 743, 806 (N.D. Cal. 2022); *accord In re Suboxone (Buprenorphine Hydrochlorine & Naloxone)*
17 *Antitrust Litig.*, 967 F.3d 264, 270-71 & n.11 (3d Cir. 2020).

18 Finally, Meta argues that Advertisers’ calculation of damages supposedly requires reaching
19 back into the pre-limitations period for damages because Meta’s monopoly was unlawfully obtained
20 more than four years before this case was filed, including through Meta’s 2015 scuttling of its
21 Platform APIs and subsequent extended API agreements. This argument is demonstrably wrong. To
22 begin with, *Berkey Photo*, which Meta relies on extensively in its brief, directly disposes of any
23 argument that Advertisers cannot prove that Meta unlawfully obtained its monopoly based on pre-
24 limitations conduct: “[A] purchaser suing a monopolist for overcharges paid within the previous four
25 years may satisfy the conduct prerequisite to recovery by pointing to anticompetitive actions taken
26 before the limitations period.” 603 F.2d at 296. Other courts, including the Ninth Circuit, are in
27 perfect accord on this point. *LaSalvia v. United Dairymen of Ariz.*, 804 F.2d 1113, 1119 (9th Cir.
28 1986) (“[W]hile plaintiffs may recover for damages they prove were caused by anticompetitive

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conduct begun before the four-year statutory period under the continuing harm doctrine, their recovery is limited to damage incurred within the four years preceding the filing of the complaint.”).² Moreover, Meta’s anticompetitive conduct both continued into, and newly occurred from day one of the four-year limitations period, including through Meta’s multi-year program of entering anticompetitive [REDACTED]. And in any event, the question of when precisely Meta’s exclusionary conduct began is a merits question that will be proved entirely through common evidence from Meta’s files.

B. Advertisers’ Yardstick Model Captures Damages Solely Attributable to Meta’s Unlawful Monopolization

Advertisers’ experts conducted a yardstick analysis to assess damages. They calculated Meta’s economic profit rate (“EPR”) during the Class Period and the EPRs of certain yardstick firms for the same period. Those yardstick firms were selected after applying six separate filters to the universe of publicly traded companies. They then used the yardsticks’ EPRs versus Meta’s EPR during the Class Period to determine what Meta’s profitability would have been in the but-for world in the absence of the alleged conduct. Such a yardstick analysis is regularly applied and routinely accepted. *See* Mot. at 21 (citing cases); *see also, e.g., In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 354 (N.D. Cal. 2005); *In re Wellbutrin SR Direct Purchaser Antitrust Litig.*, No. 04-5525, 2008 WL 1946848, at *8-*9 (E.D. Pa. May 2, 2008); *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 61-63 (2nd Cir. 2019); *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981-JD (N.D. Cal. 2023); *MM Steel, L.P. v. JSW Steel (USA), Inc.*, 806 F.3d 835 (5th Cir. 2015); *In re Nat’l Football League’s Sunday Ticket Antitrust Litig.*, No. ML-15-2668-PSJ(JEMx), 2023 WL 1813530 (C.D. Cal. Feb. 7, 2023); *Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2003 WL 302352 (E.D. Pa. Jan. 29, 2003). Meta complains that this oft-accepted methodology does not separate out the profits from

² *See also* Ex. 2 at 21 (“When a §2 action is filed in a timely fashion, the customer will be able to collect damages for the four years prior to filing and will be able to rely on pre-limitation conduct in order to establish the exclusionary practices portion of a monopolization claim.”); *cf. Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 488 (9th Cir. 2021) (“If a defendant has conspired to violate the antitrust laws and thereby harmed a market’s competitive structure, it remains liable for the continuing injuries suffered by plaintiffs from the structural harm to competition that its unlawful scheme brought about.”).

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1 the wrongful conduct. Opp. at 18. This argument fails in at least three ways, as further set forth in
 2 the opposition to Meta’s motion to exclude the testimony of Dr. Williams and Mr. Kreitzman (ECF
 3 No. 679-1).

4 **First**, the law is crystal clear that, when employing a yardstick model and when computing
 5 antitrust damages, an economist must “hold[] every other feature of the actual world constant.” Ex.
 6 3, §B. **Second**, using EPRs as a comparator, as Advertisers’ experts did, **does** account for any lawful
 7 conduct that may have occurred. Because EPRs measure economic profits **as a percentage of**
 8 **economic capital**, they can be used to compare economic profitability regardless of differences in,
 9 for example, product quality.³ **Third**, Meta ignores that the yardstick methodology employed by
 10 Advertiser’s experts looked at Meta’s EPR **in excess of the yardstick EPR**. It is this excess that is
 11 explained by Meta’s anticompetitive conduct and not its overall size or other factors.

12 **II. META’S ANTICOMPETITIVE CONDUCT IMPACTED ALL MEMBERS OF THE**
 13 **PROPOSED ADVERTISER CLASS**

14 **A. All Meta Advertising Was Sold in the Social Advertising Market**

15 All Meta advertisers were impacted by Meta’s anticompetitive conduct and paid
 16 supracompetitive prices during the Class Period as a result. Dr. Williams described this effect by first
 17 defining the parameters of the Social Advertising Market, then concluding that all advertisements
 18 sold by Meta during the Class Period were within this market. Declaration of Michael A. Williams,
 19 Ph.D. (ECF No. 642-9, the “Williams Decl.”), Ex. A, ¶¶16-211. Dr. Williams completed this exercise
 20 by conducting a full *Brown Shoe* analysis (*id.*, ¶¶144-211), applying the Horizontal Merger
 21 Guidelines methodology, including a SSNIP test (*id.*, ¶¶134-43), and analyzing hundreds of industry
 22 documents, including internal documents from Meta and their real and purported competitors. Dr.
 23 Williams concluded that all Meta advertising during the Class Period is social advertising. Meta
 24 claims that some undefined portion of its ad products are not sold within this market, and that
 25
 26

27 ³ Meta cites *Blue Cross & Blue Shield United of Wis. v. Marshfield Clinic*, 152 F.3d 588 (7th
 28 Cir. 1998), *see* Opp. at 19, but that case compared prices (which would not take difference across
 firms into account automatically) instead of EPRs.

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1 therefore some members of the Advertiser Class are uninjured. This run-around challenge to the
 2 merits of Advertisers' market allegations is flawed to its core.⁴

3 First, the evidence relied on by both parties in this dispute and the question of whether Meta
 4 monopolized the Social Advertising Market are common to the Class and, therefore, its determination
 5 should be left to the jury. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th
 6 651, 681 (9th Cir. 2022) (*en banc*) ("Reasonable minds may differ as to whether the overcharge
 7 calculated is probative as to all purchasers in the class, but that is a question of persuasiveness for the
 8 jury once the evidence is sufficient to satisfy Rule 23.") (cleaned up); *In re Korean Ramen Antitrust*
 9 *Litig.*, No. 13-CV-04115-WHO, 2017 WL 235052, at *16 (N.D. Cal. Jan. 19, 2017) (certifying class
 10 and holding "[a] final determination of the relevant market and what the defendants' market power
 11 was in that relevant market need not be decided on this motion"; "Plaintiffs have made a showing
 12 that, if defined as the narrower Korean Noodle market, the defendants had market power to be able
 13 to increase prices in the United States," which "support[s] a preliminary showing of market power
 14 and impact").

15 Second, this misguided contention is based on the speculative opposition report of Dr. Tucker,
 16 an economist who admitted at deposition that [REDACTED]

17 [REDACTED] (Ex. 4 at 12:21-25), and [REDACTED]

18 [REDACTED] *Id.* at 31:8-19; *see also id.* at 36:23-37:1. In her report, [REDACTED]

19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED].⁵ Declaration of

22
 23 ⁴ Meta cites two irrelevant cases to support their argument. *Fido's Fences, Inc. v. Radio Sys.*
 24 *Corp.*, 999 F. Supp. 2d 442, 449-53 (E.D.N.Y. 2014) (assuming, without deciding, that plaintiff
 25 pleaded a distinct market for electronic pet containment system replacement batteries, and holding
 26 that plaintiff lacked Article III standing to pursue claims in the wider electronic pet containment
 27 system market because it offered no proof it planned to compete in the wider market); and *Somers v.*
 28 *Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013) (granting motion to dismiss plaintiff's antitrust claim
 due to a contradictory overcharge theory that was implausible on its face).

29 ⁵ [REDACTED] Mot. Decl., Ex. 79.
 30 [REDACTED] 13:39. This argument is illogical and unconvincing considering that [REDACTED]

31 [REDACTED] Ex. 5 at 606.

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1 Amanda F. Lawrence in Support of Advertiser Plaintiffs' Mot. for Class Certification (ECF No. 642-
2 2, the "Mot. Decl."), Ex. 79, ¶41.

3 Dr. Tucker's opinions are also incorrect when the record is examined. For example, Meta
4 CMO Alex Schultz testified that [REDACTED]

5 [REDACTED] (Ex. 6 at 154:23-155:6, 158:6-16, 159:3-5), [REDACTED]

6 [REDACTED].⁶ Williams Decl., Ex. B, ¶57 (citing Ex. 7 at 725); Ex. 8 at
7 slide 15; Ex. 9; Ex. 10 at 495. Also, Dr. Williams found that internal Meta documents [REDACTED]

8 [REDACTED]

9 [REDACTED] Williams Decl., Ex. B, ¶53.

10 Similarly, Meta's documents show that [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] *Id.*, ¶53, n.48 (citing Ex. 11).

14 Accordingly, Dr. Williams' expert report and the supporting evidence, including from Meta's
15 own files, provides a sufficient basis to show that all Meta advertisers were impacted by Meta's
16 monopolization of the Social Advertising Market. *In re Online DVD Rental Antitrust Litig.*, No. M
17 09-2029 PJH, 2010 WL 5396064, at *9 (N.D. Cal. Dec. 23, 2010), *aff'd*, 779 F.3d 934 (9th Cir. 2015)
18 (finding plaintiffs' expert's benchmark damages methodology and overcharge theory credible
19 because they were "supported by actual documentary evidence and data thus far produced in the
20 action, and provide an adequate basis from which plaintiffs propose to demonstrate with proof
21 common to the class that Wal-Mart's exit from the online DVD rental market harmed class
22 members"); *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1210-12, 1214 (N.D. Cal.

23 ⁶ Even if the Court were to find that Meta ads on both Marketplace and FAN are not within the
24 Social Advertising Market, the Class still may be properly certified because these platforms are
25 responsible for no more than [REDACTED] of Meta's ad revenue during the Class Period (*see* ECF No. 679-1
26 at 6), and thus, Meta advertisers that only purchased ads placed on these surfaces represent a *de*
27 *minimis* portion of the proposed Class. *See Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1136-37
28 (9th Cir. 2016) (presence of uninjured class members in class did not preclude predominance finding);
In re Lidoderm Antitrust Litig., No. 14-MD-02521-WHO, 2017 WL 679367, at *12 (N.D. Cal. Feb.
21, 2017) (5.4% of proposed class whose injury was challenged was *de minimis*); *In re Nexium*
Antitrust Litig., 777 F.3d 9, 30-31 (1st Cir. 2015) (5.8% of proposed class whose injury was challenged
was *de minimis*); *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 826 (7th Cir. 2012) (2.4%
of proposed class whose injury was challenged was *de minimis*).

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2013) (holding that plaintiffs’ “documentary evidence from Defendants’ internal files” and the “expert reports” that relied on these documents was sufficient evidence to “support[] their theory that Defendants’ formal compensation structures combined with the premium Defendants’ placed on internal equity created a market”); *Lidoderm*, 2017 WL 679367, at *10 (expert reliance on defendants’ own internal documents and academic and industry studies to define market was persuasive evidence that injury could be shown on a classwide basis); *Le v. Zuffa, LLC*, No. 2:15-CV-01045-RFB-BNW, 2023 WL 5085064, at *15, *18-19 (D. Nev. Aug. 9, 2023) (disposing of defendant’s “thinly veiled attempt to dilute its market dominance” and finding that plaintiffs sufficiently defined relevant markets and barriers to entry for purpose of class certification based on plaintiffs’ economics expert’s report and “myriad record evidence”).

B. All Meta Advertisers Are Subject to Prices Set by Meta’s Advertising Auction

All members of the proposed Advertiser Class purchased Meta Ads through the Meta Ad Auction or paid prices set by the Meta Ad Auction, which, in practice and under precedent, provides classwide proof of injury.

First, internal Meta documents show that [REDACTED], and even the *de minimis*⁷ number [REDACTED] of putative Class members [REDACTED]. Williams Decl., Ex. B, ¶¶130-133.

Second, as detailed *supra* §I(B), Dr. Williams has provided a reliable yardstick methodology and overcharge damages theory that shows Meta charged monopoly-enabled supracompetitive prices across all of Meta’s ad products. Thus, all Meta ads purchased during the Class Period were impacted by Meta’s anticompetitive conduct and common issues predominate regardless of when these ads were purchased, who made the purchase, how many ads were purchased, for how long they ran, or any other auction input. *See e.g., Olean*, 31 F.4th at 677-78 (finding “class-wide impact, even when the market involves diversity in products, marketing, and prices, especially where, as here, there is evidence that the conspiracy artificially inflated the baseline for price negotiations”) (cleaned up); *In re Auction Houses Antitrust Litig.*, 193 F.R.D. 162, 166-67 (S.D.N.Y. 2000) (certifying class and

⁷ *See supra*, n.6.

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1 finding classwide antitrust impact in auction market despite evidence of individual negotiations and
 2 product variations); *DeLoach v. Philip Morris Cos., Inc.*, 206 F.R.D. 551, 562-63 (M.D.N.C. 2002)
 3 (finding classwide antitrust impact in tobacco auction market).

4 Meta relies on *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6 (1st Cir.
 5 2008), for the proposition that an auction market is inherently incompatible with common impact. As
 6 the Ninth Circuit held in *Olean*, “[t]his reliance is misplaced.” 31 F.4th at 678-79 (common issues
 7 predominated as to antitrust injury when defendants’ anticompetitive conduct “result[ed] in higher
 8 prices for all buyers”). Meta’s reliance on *Cabrera v. Google LLC*, No. 5:11-cv-01263-EJD, 2023
 9 WL 5279463 (N.D. Cal. Aug. 15, 2023), is similarly misplaced. In that breach of contract action, the
 10 court denied certification of a class that claimed a specific Google ad auction function sometimes, but
 11 not all the time, failed to perform as intended or only partially performed in response to an advertiser’s
 12 bid. *Id.*, at *24-*25. The court found that the identification of each auction bid that was affected by
 13 this inconsistent breach raised individualized issues, but not before “quickly dispos[ing] of the
 14 argument that Plaintiffs must account for advertisers’ bidding strategies” and clarifying that “the
 15 dynamics of any given auction need not be considered under Plaintiffs’ theory, so individualized
 16 inquiries into those dynamics will not predominate.” *Id.*

17 **C. Meta’s Arguments About the Undefined and Unsubstantiated “Benefits” of Its**
 18 **Exclusionary Conduct Are Meritless**

19 Meta argues that Advertisers cannot show classwide injury because some class members
 20 supposedly received benefits from the conduct charged in this case, reducing the amount of their
 21 overcharge. This argument does not withstand scrutiny. As an initial matter, it is contrary to well-
 22 accepted economic theory to posit that Meta’s advertisers are better off because the company
 23 maintained, rather than lost, its monopoly power during the Class Period. The common injury in this
 24 case is that members of the Advertiser Class – people who bought advertising from Meta during the
 25 Class Period – were overcharged because Meta had monopoly power during this period, **which it**
 26 **possessed because of the Meta’s accused conduct.** As Professor Gans has explained, a [REDACTED]
 27 [REDACTED]. Declaration of Joshua
 28 S. Gans (ECF No. 642-13), Ex. B, ¶¶18-19. And of course, if the monopolist reduces prices as a

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1 result of the efficiencies it obtains, then the monopoly price fully reflects that. Moreover, Meta has
 2 not identified a single supposed “benefit” received by any Advertiser Class members. Meta’s
 3 argument is based on *ipse dixit* and unsupported statements by its expert, Dr. Tucker, [REDACTED]
 4 [REDACTED]
 5 [REDACTED]. Ex. 4 at 146:13-152:7.

6 Meta’s argument is also counterfactual. The undisputed record shows that during the Class
 7 Period, [REDACTED]. See
 8 Williams Decl., Ex. B, ¶¶81-83 ([REDACTED]
 9 [REDACTED]). Meta has not offered any evidence to the contrary, nor has it
 10 offered any expert analysis demonstrating efficiencies attributable to Meta’s exclusionary acts or that
 11 any benefits made their way to Advertisers and the Class. Meta cannot simply manufacture
 12 hypothetical and speculative “benefits” to Plaintiffs and Class members in order to defeat class
 13 certification. See *In re Elec. Books Antitrust Litig.*, No. 11-MD-2293-DLC, 2014 WL 1282293, at
 14 *17 (S.D.N.Y. Mar. 28, 2014) (“*eBooks*”).

15 Judge Cote’s decision in *eBooks* is instructive. There, Apple made the same argument Meta
 16 offers here – that plaintiffs were required to offset their measure of classwide injury and damages
 17 with supposed benefits resulting from the anticompetitive conduct. See 2014 WL 1282293, at *16-
 18 *17. The court began by noting the well-established rule that “[w]here the but-for price is uncertain,
 19 ‘the plaintiff’s burden of proving damages is, to an extent, lightened,’ for ‘the wrongdoer shall bear
 20 the risk of the uncertainty which his own wrong has created.’” *Id.*, at *16 (*New York v. Hendrickson*
 21 *Bros., Inc.*, 840 F.2d 1065, 1077 (2d Cir. 1988), and *Bigelow v. RKO Radio Pictures*, 327 U.S. 251,
 22 265 (1946)); accord *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 565-67 (1981).
 23 Then, applying the Supreme Court’s decision in *Hanover Shoe*, the court expressly rejected the same
 24 argument offered by Meta in its class certification opposition:

25 As significantly, an antitrust defendant may not alter this well-settled
 26 measurement of damages by speculatively raising potential offsets, even
 when those offsets are directly related to the goods at issue.

27 *eBooks*, 2014 WL 1282293, at *17. As Judge Cote explained, Apple’s proposed offsets were too
 28 speculative or attenuated to be factored into the damages calculations under *Hanover Shoe*:

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Applying these principles to each of the four offsets that Apple requests, it is readily apparent that none will create individualized issues that preclude class certification. Some of these offsets do not directly relate to the transactions at issue here; consequently, any imagined benefits are too remote to be considered in damages calculations. Others concern the relevant transactions but are based purely on conjecture about speculative happenings in the but-for-world. Pursuant to the sound policy taught by *Hanover Shoe*, such offsets must be rejected.

Id., at *19 (rejecting promotion of self-publishing; lower prices during the Class period; speculation that some consumers may not have purchased absent the conduct; and the elimination of release windows for books as “offsets” that must be considered as part of injury and damages analysis). Meta’s speculation here is far worse than what Apple offered in *eBooks*. Meta states, without support, that its ads improved as a result of its monopoly-maintaining conduct, so, Meta’s argument goes, Advertiser Class members must have received some unidentified benefits. That is not sufficient to call into doubt Advertisers’ proof on injury and damages. The issue is not close. *See id.*, at *20 (“Legally, again, *Hanover Shoe* bars an offset argument rooted in rank speculation about the but-for world. Because of Apple’s conduct, there is no way to know whether a given title would or would not have been ‘windowed’ and whether a given purchaser of its e-book would or would not have waited through the ‘windowing’ period or purchased a hardcover edition. Furthermore, Apple may not avoid liability for overcharging a customer by speculating that that customer may have been better off paying the overcharge than being unable to purchase the good at all.”).

III. ADVERTISERS’ PROPOSED CLASS REPRESENTATIVES ARE BOTH TYPICAL AND ADEQUATE

Rule 23(a)(3)’s typicality requirement is “permissive.” *In re Infineon Techs. AG Sec. Litig.*, 266 F.R.D. 386, 393 (N.D. Cal. 2009). “In determining whether typicality is met, the focus should be on the defendants’ conduct and plaintiffs’ legal theory, not the injury caused to the plaintiff.” *Miletak v. Allstate Ins. Co.*, No. 06-03778-JW, 2010 WL 809579, at *11 (N.D. Cal. Mar. 5, 2010) (cleaned up). In this case, each proposed Class Representative displayed an understanding of the case, the injuries caused to the Advertiser Class, and a willingness to represent it, which is more than what is required:

- Mark Young, [REDACTED] (Ex. 12 at 84:23), and [REDACTED] (*id.* at 273:21-25), [REDACTED]. *See, e.g., id.*

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at 90:20-22

: 132:8-11

Id. at 201:17-22.

- Katherine Looper

Ex. 13 at 63:14-21, 152.

(*id.* at 179:8-11),

See,

e.g., id. at 99-100

Id. at 173-74

- Mark Berney, individually and as the principal of 406 Property Services, PLLC, stated

(Ex. 14

at 96:3-5),

Id. at 143:5-9.

Id. at 73:25-74:3.

Id. at 75:3-5.

- Likewise, Jessyca Frederick, individually and on behalf of her company Affilious, Inc.,

(Ex. 15 at 17:11-13),

Id. at

17:18-19.

(*id.* at 45:24-46:1),

Id. at 46:4-5.

Faced with these proposed Class Representatives, Meta harps on the size and sophistication levels of some ad buyers in the Advertiser Class. Yet the typicality requirement does not mandate that class representatives be typical of all ad buyers, but instead focuses on whether they suffered the same or similar injury as other class members. *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). And Meta's argument regarding varying degrees of sophistication has been flatly rejected, including by this Court. In *DZ Reserve v. Meta Platforms, Inc.*, No. 3:18-cv-04978-JD, 2022 WL 912890 (N.D. Cal. Mar. 29, 2022), this Court faced similar arguments on

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1 typicality and adequacy from Meta, including reliance on the same case, *In re Facebook, Inc., PPC*
2 *Advert. Litig.*, 282 F.R.D. 446 (N.D. Cal. 2012). The Court stated that Meta overread the *PPC* case,
3 especially considering it did ultimately find typicality, and stated succinctly: “It may be that class
4 members differ in advertising budgets and scope of purchases, as Meta suggests, but Meta has not
5 shown that these differences defeat typicality or the named plaintiffs’ ability to adequately represent
6 all class members.” *DZ Rsrv.*, 2022 WL 912890, at *4; *see also Ewert v. eBay, Inc.*, No. C-07-02198-
7 RMW, 2010 WL 4269259, at *3-*4 (N.D. Cal. Oct. 25, 2010) (rejecting varying sophistication
8 argument). Here too, Meta has not demonstrated any serious challenge to typicality or adequacy as
9 none exist.

IV. META’S “INDIRECT PURCHASER” ARGUMENT IS MERITLESS

11 Meta offers a one-paragraph, conclusory argument that the Class should not be certified
12 because it may include both direct and indirect purchasers, the latter of which Meta claims would lack
13 standing. This issue is entirely manufactured. Direct purchasers are “those who are the immediate
14 buyers from the alleged antitrust violators,” whereas indirect purchasers are “two or more steps
15 removed from the antitrust violator in a distribution chain.” *Apple Inc. v. Pepper*, U.S., 139 S. Ct.
16 1514, 1521 (2019) (cleaned up). The proposed class definition encompasses only persons “who
17 purchased advertising *from* Meta,” (Notice of Mot.), the natural reading of which does not include
18 purchasers “two or more steps removed” from Meta. And indeed, courts have certified similarly
19 defined classes without issue. *See, e.g., In re Tableware Antitrust Litig.*, 241 F.R.D. 644, 647 (N.D.
20 Cal. 2007) (certifying class of “[a]ll persons who purchased in the United States from [defendants]”).
21 Should the Court nonetheless find the proposed Class definition insufficiently precise to encompass
22 only direct purchasers, the remedy is straightforward: the Court can revise the Class definition to only
23 persons “who purchased advertising *directly* from Meta.” *See Olean*, 31 F.4th at 669 n.14 (“[T]he
24 problem of a potentially over-inclusive class can and often should be solved by refining the class
25 definition rather than by flatly denying class certification on that basis.”) (cleaned up).

CONCLUSION

27 The Court should grant Advertisers’ motion for class certification and certify the proposed
28 Advertiser Class.

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1 Dated: November 3, 2023

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FILER ATTESTATION

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: November 3, 2023

By: /s/Amanda F. Lawrence
Amanda F. Lawrence

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2023, I caused a true and correct copy of the foregoing document to be served by electronic mail on all counsel of record.

Dated: November 3, 2023

By: /s/Amanda F. Lawrence
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